IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CIVIL REVISION NO.1203 OF 1993
DECIDED ON : 05.12.2007.

Anokh Singh and others.

....Petitioner

Versus

Central Bank of India, Mandi Road, Jalandhar through Branch Manager.

....Respondent

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CORAM: HON'BLE MR.JUSTICESHAM SUNDER.

Present:- Mr.Kanwaljit Singh, Sr. Advocate with
Mr.I.S.Gill, Advocate
for the petitioner.

None for the respondent.

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JUDGMENT:

This revision petition is directed against the order dated 15.12.1992, rendered by the Court of Sub-Judge First Class, Jalandhar, vide which it dismissed the application under Section 47 read with Section 151 CPC for refund of excess amount, realized by the decree-holder.

2. The facts, in brief, are that Anokh Singh defendant/Judgment debtor raised a loan of Rs.8280/-, from the respondent, for tubewell on 10.04.1973. He also raised crop loan of Rs.6,000/- on 23.07.1973, from the respondent. The other defendants/judgment debtors stood sureties, for the repayment of the loan amount. When the loan amount was not repaid by the defendants/judgment debtors, Civil suit No.167 of 1979 for recovery of Rs.26912.36 was filed, which was decreed on 27.07.1981 with costs and future interest at the rate of 16½% per annum. However, in appeal, the decree of the Lower Court was modified and interest

was reduced to 6% per annum. According to the revision petition the principal amount thus came to be Rs.11863/- because he had paid Rs.3,000/- on 14.01.1973, out of the total amount of Rs.14,280/-, and the total interest, on this amount upto 20.06.1991 came to be Rs.8422/-. After adding Rs.3141.50 as costs of the suit, the total amount due from the JDs, came to be Rs.38475/-. JD paid Rs.10,000/- to the DH bank on different dates and an amount of Rs.10,000/- was credited in the account of the JD, by the DH, under the Government Scheme, for relief to agriculturists. Without knowing that an amount of Rs.10,000/- had already been credited, in the account of the JD, he paid an amount of Rs.25,000/- on 20.06.1991 and Rs.717/- on 21.06.1991. It was further stated that, in this manner, the JD paid Rs.7225/- in excess to the DH bank, to which it was not entitled. The DH bank filed an execution application, which stood dismissed. Accordingly, a prayer was made, that the DH be directed to refund the excess amount to the JD.

3. In reply to the application, it was pleaded by the DH that the application was not maintainable. It was stated that the JD got debited Rs.10,000/-, in the account, by misrepresentation and suppression of facts, as the clause for relief to the agriculturist, was not applicable, in the said case, as the decree was granted many years ago. It was further stated that this amount of Rs.10,000/-, which was wrongly got debited by the JD, had to be recovered with interest. It was admitted that loan, as depicted in the application was raised by the JD. It was denied that the principal amount cAme to be Rs.11,863/-. On the other hand, it was stated that the decretal amount was Rs.26,912.36. It was further stated that the executing Court, could not go behind the decree. It was further stated that an amount of Rs.49071.29p, was due, as on

20.06.1991 from the JD and he only paid an amount of Rs.11,000/-. It was further stated that an amount of Rs.13,071.29 was still due to the JD, at the time of filing reply. It was further stated that there was no over-payment was made by the JD, to the DH bank.

4. After hearing the Counsel for the parties, and on, going through the record of the case, the Lower Court, dismissed the application, vide order dated 15.12.1992.

5. Feeling aggrieved, against the order dated 15.12.1992, the instant revision-petition was filed by the JD/revision petitioner.

6. Notice of the revision-petition, was given to the respondent, on behalf of which a Counsel appeared initially, but lateron none appeared on its behalf, at the time of arguments.

7. I have heard the Counsel for the revision petitioner and have gone through the record of the case, carefully.

8. Learned Counsel for the revision petitioner, at the very outset, contended that the revision-petitioner made an over-payment of Rs.7225/- and, as such, he was entitled to the refund of the same from the DH. The submission of the Counsel for the revision-petitioner, does not appear to be correct. In the application, in which order dated 15.12.1992 was passed by the Lower Court, the revision-petitioner gave his own calculations, according to his choice, and not on the basis of any record. Decree in the sum of Rs.26912.36, was passed, in favour of the respondent/DH bank. No doubt in appeal, the interest was reduced to 6% per annum from 16½% per annum, which was granted by the Lower Court. The DH bank, on the basis of its books of account, came to the conclusion, as to how much amount was due to it. Whatever amount was due to the DH bank, was shown in its account books which are maintained, in the regular course of its business, and presumption of correctness is attached thereto. No document, was brought, on

record, by the JD, to show, as to how he made over-payment to the bank. If the JD got debited by misrepresentation, an amount of Rs.10,000/-, claiming that he was entitled to the subsidy, and when that misrepresentation was detected by the DH bank, it reversed the entry, it could not be said that the JD made over-payment. Even otherwise, the executing Court could not go behind the decree. In case, the alleged excess payment had been made by the JD, he could take up this plea, in the appeal, or establish the same, in the executing Court, on the basis of some authentic and legally admissible material. Even no document, was produced, on the record, as to when the alleged payments, depicted in the application, were made by the JD. Whatever payments were made by the JD, were duly accounted for, in the books of account, maintained by the DH bank, in the regular course of its business. The Lower Court was right, in holding, that the application filed by the JD, was not maintainable. The order of the Lower Court, does not suffer from any illegality or infirmity. Therefore, no interference is called for therewith.

9. For the reasons recorded hereinbefore, the revision petition is dismissed with no order as to costs.

December 05, 2007 **(Sham Sunder)**
mamta m **Judge**